
MAINE GUIDE TO FEDERAL CONSISTENCY REVIEW



MAINE COASTAL PROGRAM

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Maine Guide to Federal Consistency Review

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I. INTRODUCTION

The Maine Coastal Zone Management Program ("Maine Coastal Program") was created by the State of Maine and approved by the National Oceanic and Atmospheric Administration ("NOAA") in 1978, pursuant to the federal Coastal Zone Management Act of 1972 ("CZMA"). The State Planning Office ("SPO") administers the program, which provides funding for policy initiatives, technical assistance, and enforcement of state laws that affect the "coastal zone" in Maine. One component of this program is the authority of the State to review certain federal actions that affect the coastal zone to ensure that these activities are consistent with the enforceable state policies that have been made a part of the Maine Coastal Program. This review process is generally known as "federal consistency review."

This handbook is intended to help state and federal agencies, federal permit applicants, federal assistance applicants, and the public understand when federal consistency review is needed and how Maine conducts federal consistency reviews.

NOAA revised the federal regulations governing the federal consistency review process in rules effective February 6, 2006.¹ This guide reflects those revisions.

Note: While this document is intended to act as a guide to federal consistency review, it is not legally binding and does not substitute for the federal regulations applicable to this review procedure. The reader is referred to the regulations noted throughout this document and the federal Coastal Zone Management Act, 16 U.S.C. §1451 *et seq.*, for the legal authority on which is this guide is based.

II. THE MAINE COASTAL ZONE

Maine's federally approved coastal zone extends from the inland boundary of all 147 coastal towns that contain tidal waters to the outer limit of the State's territorial jurisdiction (3 nautical miles). Appendix B is a map of the Maine coastal zone. Only those federal actions that "affect any land or water use or natural resource" in Maine's coastal zone are subject to federal consistency review. This includes federal actions that are conducted *outside* the coastal zone, but still affect any land or water use or natural

¹ 71 FR 788-831 (January 5, 2006). These rules will be codified at 15 CFR Part 930 in the 2007 Code of Federal Regulations.

resource of Maine's coastal zone (a use or resource of Maine's coastal zone could be affected even when the use or resource occurs outside the coastal zone).

All federally owned properties are *excluded* from the coastal zone. However, federal actions on these properties that have reasonably foreseeable effects on any land or water use or natural resource in Maine's coastal zone are still subject to a federal consistency review.

III. FEDERAL ACTIONS SUBJECT TO CONSISTENCY REVIEW

Federal actions subject to federal consistency review fall into the following four categories:

- ◆ Activities conducted or supported by any federal agency or any federal development project, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone ("Federal Agency Activities"). *15 CFR Part 930, Subpart C.*
- ◆ Activities proposed by non-federal applicants for which a federal license or permit is required, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone ("Federal License or Permit Activities"). *15 CFR Part 930, Subpart D.*
- ◆ Activities described in any plan submitted to the Secretary of the Interior for the exploration or development of, or production from, any area, which has been leased under the Outer Continental Shelf Lands Act ("Outer Continental Shelf Plans"). *15 CFR Part 930, Subpart E.*
- ◆ Activities that are the subject of applications for federal assistance under other federal programs submitted by state and local governments ("Federal Assistance Activities"). *15 CFR Part 930, Subpart F.*

A. Federal Agency Activities²

1. Federal Agencies' Consistency Obligations

As a general rule, a federal agency undertaking an activity that the federal agency determines will affect any coastal use or resource must provide a consistency determination to SPO for review by the State. *15 CFR §930.34(a)(1)*. A federal agency is required to meet this obligation regardless of whether a state has listed the activity in its coastal program if the activity has reasonably foreseeable coastal effects. The Maine Coastal Program currently lists the following as federal agency activities³ that, in the State's judgment, are matters for which a federal consistency determination is required:

- ❖ Army Corps of Engineers
 - ✓ proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment and dams
 - ✓ proposed acquisitions
- ❖ Department of Commerce
 - ✓ fisheries management proposals by National Marine Fisheries Service
- ❖ Department of the Interior
 - ✓ proposed National Park Service acquisitions
 - ✓ proposed U.S. Fish & Wildlife Service acquisitions
- ❖ Department of Defense
 - ✓ location and design of new or enlarged defense installations
- ❖ Department of Transportation
 - ✓ location and design of new or enlarged Coast Guard stations, bases, and lighthouses
 - ✓ location and design of aviation communication and air navigation facilities
- ❖ General Services Administration
 - ✓ location and design of proposed Federal government property acquisition and building construction
 - ✓ disposal of surplus Federal lands

² 15 CFR §930.31 provides a detailed definition of the term "federal agency activity."

³ Maine Coastal Program document (Final Environmental Impact Statement, August 1978), Appendix E2, p. 295.

Note: Since as noted above the responsible federal agency must submit a consistency determination for any federal agency activity that will affect any land or water use or natural resource of the Maine coastal zone, the foregoing list of federal agency activities is provided as an aid to federal agencies pursuant to 15 CFR §930.34(b). SPO monitors unlisted activities, which may also be subject to consistency review, primarily through Maine's Intergovernmental Review Process under Federal Executive Order 12372.

2. Negative Determinations

If a federal agency decides that its proposed activity will not have coastal effects, the federal agency must submit a “negative determination” to SPO in the following circumstances:

- ◆ the activity is one of the listed activities described in the subsection 1, above, or is an unlisted activity that the SPO has identified on a case-by-case basis as an activity with potential coastal effects;
- ◆ the federal agency has prepared a consistency determination for the same or similar actions in the past; or
- ◆ the federal agency has undertaken a consistency assessment and developed initial findings on coastal effects. *15 CFR §930.35(a).*

The federal agency must notify SPO of the basis for its negative determination at least 90 days prior to final federal approval of the activity. *15 CFR §930.35(b), (c).* SPO encourages federal agencies to provide such notice as soon in the planning process as practicable. In the event of a disagreement, either party may seek mediation by the Secretary of Commerce or NOAA's Office of Ocean and Coastal Resource Management (OCRM). *15 CFR §930.35(d) and Part 930, Subpart G.*

3. Environmentally Beneficial Activities

Having provided opportunity for public comment, the State and federal agency may agree to exclude an “environmentally beneficial” activity from further federal consistency review. *15 CFR §930.33(a)(4)* (definition of “environmentally beneficial activities”). A federal agency interested in this option should contact SPO, which will request that DEP and/or other state agencies with jurisdiction over the relevant coastal resources issues evaluate the foreseeable coastal effects of the federal proposal.

B. Federal License or Permit Activities⁴

1. Listed License or Permit Activities

A federal license or permit, or other form of federal approval, certification, or authorization, listed below, may not be issued until the State concurs that the proposed activity is consistent with the enforceable policies of the Maine Coastal Program. For the following listed activities⁵ occurring within the coastal zone, the State uses the same standards and procedures for evaluation of consistency as are used to evaluate license and permit applications under applicable state coastal management program core laws. Consideration of core law permits will constitute the State's consistency review, and approval of all core law permits with attached conditions shall constitute the State's consistency concurrence.

❖ United States Army Corps of Engineers:

- Permit for discharges of dredged or fill materials in waters of the United States and their associated wetlands required under Section 404 of the Clean Water Act, 33 U.S.C. §1344.
- Permit for structures or work in or affecting navigable waters of the United States required under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. §403.
- Permit for transportation of dredged material for the purpose of dumping in ocean waters required under Section 103 of the Marine Protection, Research, and Sanctuaries Act ("Ocean Dumping Act"), 33 U.S.C. §1413.

❖ Department of Homeland Security - United States Coast Guard:

- Permit for construction or modification of bridge structures across navigable waters of the United States under Section 9 of the Rivers and Harbors Act of 1899, 33 U.S.C. §401 and/or the General Bridge Act of 1946, 33 U.S.C. §525.
- Permit for a deep water port under the Deepwater Port Act, 33 U.S.C. §§ 1501 et seq.

⁴ 15 CFR §930.51 (defines the term "federal license or permit").

⁵ Maine Coastal Program document, *supra*, pp. 296-7, as clarified by routine program change providing pertinent citations and related clarifications, approved by NOAA October 25, 2005.

❖ **Environmental Protection Agency:**

- National Pollution Discharge Elimination System (NPDES) permit⁶ under Section 402 of the Clean Water Act, 33 U.S.C. §§1342, *et seq.*
- Ocean dumping permit (authority exercised jointly with the United States Army Corps of Engineers) required under the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. §1401, *et seq.*

❖ **Department of the Interior:**

- Permits for pipeline rights of way for oil and gas transmission on the Outer Continental Shelf required under the Outer Continental Shelf Lands Act, 43 U.S.C. §§1334, *et seq.*

❖ **Department of Energy – Federal Energy Regulatory Commission:**

- Licenses required for non-federal hydro-electric projects and associated transmission lines under Section 4(e) of the Federal Power Act, 16 U.S.C. §797e.
- Certificates authorizing construction, extension, acquisition or operation of pipelines, terminals or facilities for transportation or storage of natural gas for interstate commerce, under the Natural Gas Act, 15 U.S.C. §717b (Section 3) or §717f (Section 7).
- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act, 15 U.S.C. §717f(b).
- Authorization for importation of liquefied natural gas, under Section 3 of the Natural Gas Act, 15 U.S.C. §717b.

❖ **Nuclear Regulatory Commission:**

- License for construction and operation of a nuclear power plant, required under the Energy Reauthorization Act of 1974 and/or 10 C.F.R. Part 52.

2. Unlisted License and Permit Activities

SPO, on behalf of the State, may also request a consistency review of a federal license or permit activity that is not listed under subsection 1, or, if listed occurs outside Maine's coastal zone or a "geographic location" described in Maine's federally approved coastal program, above, if the activity can reasonably be expected to affect the coastal zone. 15 CFR §§930.53 and 930.54. In order for the State to review an unlisted activity, the State

⁶ Note: NPDES permits issued by the Maine Department of Environmental Protection under delegated authority are state actions not subject to federal consistency review.

must obtain approval from OCRM, which must base its decision solely on whether the proposed activity has reasonably foreseeable effects on Maine's coastal zone.

C. Outer Continental Shelf Plans

Federal license or permit activities described in detail within OCS plans are reviewed for consistency with the enforceable policies contained in the Maine Coastal Program. *15 CFR Part 930, Subpart E.*

D. Federal Assistance Activities

Federal assistance activities that affect the coastal zone are subject to consistency review. *15 CFR Part 930, Subpart F.* The term “federal assistance activities” means federal grants, contracts, loans, subsidies, guarantees, insurance, or other form of financial aid provided to units of state or local government. (*See 15 CFR §930.91.*)

SPO monitors federal assistance activities in the coastal zone, as well as those occurring outside but affecting the coastal zone, through the Intergovernmental Review Process pursuant to Federal Executive Order 12372. Through this process, applicants provide notice to the State that they intend to seek federal assistance.

IV. ENFORCEABLE POLICIES

A. State Authorities Included in the Federal Consistency Review

As noted above, the CZMA requires certain federal actions affecting Maine's coastal zone to be consistent with the "enforceable policies" contained in the Maine Coastal Program. *If a federal action is not addressed by one of the enforceable policies, it is presumed to be consistent with the Maine Coastal Program, and a federal consistency review is not necessary.* The enforceable policies of the Maine Coastal Program are contained in the state laws and implementing regulations listed in Appendix A and are commonly referred to as the program's “core laws” or “core law authorities.” Since these laws and regulations are administered by various state agencies and municipalities, SPO coordinates the consistency review as necessary and serves as a single point of contact to receive requests for consistency reviews and to communicate with federal agencies and the public on consistency review issues and decisions. SPO periodically (typically

following each legislative session) updates the state core law authorities as these laws are amended and supplemented and submits the changes to OCRM. Once SPO publishes a notice announcing OCRM's approval of the incorporation of the changes into the Maine Coastal Program, the revised State laws apply to federal consistency reviews.

B. Standard of Review

Maine's consistency review process uses the same standards and, to the extent practicable, the same procedures used in processing license and permit applications. A consistency denial by the State must cite and be based *directly* on provisions contained in the federally approved enforceable policies. 15 CFR §930.43(a). State authorities that are not included in Maine's Coastal Program *cannot* be used as a basis for denying consistency.

V. FEDERAL CONSISTENCY REVIEW PROCEDURE

A. Overview

The procedure for obtaining the State's concurrence with a determination that a federal activity is consistent with applicable state law varies depending on the type of federal activity described above. Sections B, C, D, and E of this part separately outline the process as it applies to federal agency activities, federal license or permit activities, OCS plans and federal assistance activities, respectively.

Maine encourages early coordination regarding federal consistency review. The initial step for federal consistency review of any federal action should be to contact the federal consistency coordinator at SPO to inform the State of the proposed action. This early coordination will help answer questions concerning whether a review is necessary and the scope of the review. Typically SPO will refer the federal agency or applicant to the Maine Department of Environmental Protection (DEP) to discuss whether and how enforceable policies apply to the proposal activity. If necessary, SPO will arrange a meeting at which the activity is discussed by the relevant state authorities, again typically DEP, to identify and, whenever possible, to resolve any issues that are likely to arise when a formal consistency determination or certification is subsequently submitted.

B. Federal Agency Activities

The CZMA requires federal agency activities affecting Maine's coastal zone to be "consistent to the maximum extent practicable" with the enforceable policies contained in the Maine Coastal Program. The phrase "consistent to the maximum extent practicable" means "fully consistent with the enforceable policies of [a state's approved coastal management program] unless full consistency is prohibited by existing law applicable to the Federal agency." 15 CFR §930.32(a)(1). "Accordingly, whenever legally permissible, federal agencies shall consider the enforceable policies of [state coastal] management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates." 15 CFR §930.32(a)(2).

The State has 60 days to respond to a request for a consistency review. 15 CFR §930.41. The time period begins when:

- ♦ the State receives a consistency determination; and
- ♦ the documentation for the review is sufficient to perform the review. (See 15 CFR §§930.39(a) and 930.41(a).) The State will notify the federal agency in writing within 14 days if it receives a consistency determination not accompanied with the supporting information required by 15 CFR §930.39.

The federal agency must grant one 15-day extension if requested by the State, and may grant further extensions at its discretion. The federal agency may presume state concurrence with a consistency determination if the State does not respond within the 60-day time period. *Id.* The State and the federal agency may agree to a longer review period. 15 C.F.R. §930.41(b)(c).

A final federal action may not be taken sooner than 90 days from the issuance of the consistency determination by the federal agency to the State, unless the State has concurred or is presumed to have concurred prior to that time, or unless otherwise agreed by both the federal agency and the State. 15 CFR §930.36(b)(1); 15 CFR §930.41(c).

STEP

TIME

- | | |
|--|--|
| 1. The federal agency sends a copy of its consistency determination, request for state review, and all supporting documents to SPO ("submission"). Following consultation with SPO, the federal agency may submit all materials needed for consistency | At least 90 days prior to final approval by the federal agency |
|--|--|

review directly to the lead review agency (usually DEP), provided that SPO receives, at a minimum, a copy of the consistency determination referencing materials separately submitted to the lead review agency.

- | | | |
|----|--|--------------------------------|
| 2. | SPO sends a copy of the submission to the Department of Environmental Protection (DEP) and/or other appropriate agency(ies). | As soon as possible; as needed |
| 3. | The lead reviewing agency (typically DEP) checks the submission for completeness (consistency determination and supporting information required by 15 CFR §930.39(a)). | Within 14 days |

If the submission is complete, the State's review begins and the 60-day time period starts when the submission was received.

If the submission is not complete, SPO, in consultation with the lead reviewing agency (typically DEP), will notify the federal agency in writing. *See 15 CFR §930.41(a)*. The lead reviewing agency works with SPO and the federal agency to address any information needs. The reviewing agency notifies SPO and the federal agency when the submission is complete and is accepted for review and the 60-day review period starts when the complete information was received by the State.

Note: As noted above, to the extent practicable, Maine uses the same procedures and standards used in processing state license and permit applications for review of federal consistency determinations. Consequently, even though the federal agency may not be required to follow state permit procedures and obtain a permit *per se*, information from federal agencies is often most conveniently and expeditiously submitted as a permit application. The State may request submission of additional information during the review period as needed to complete the consistency review.

4. If federal consistency review is required, the State will ensure publication of notice of the federal agency's consistency determination and opportunity for public comment in accordance with *15 CFR §930.42*. In most cases, the public comment period will be 14 days, although DEP and other review agencies may accept and consider comments received up to the issuance of its findings and decision regarding consistency. Usually within 30 days
 5. The lead reviewing agency consults with other state agencies (such as the Maine Geological Survey (MGS), the Department of Marine Resources (DMR), and the Department of Inland Fisheries and Wildlife (IFW) as needed. If the agency requires additional time to perform its review, it will notify the SPO as soon as possible. SPO, in consultation with the lead reviewing agency, will then request an extension from the federal agency. Within 60 days
 6. The lead reviewing agency makes its decision regarding concurrence or objection to the consistency determination and transmits that decision to SPO in the form of an agency order that grants or denies permit approval. The order provides the factual findings and legal conclusions for the State's concurrence with or objection to the federal agency's consistency determination.
 7. Based on the lead reviewing agency's findings and decision, SPO notifies the federal agency of the State's concurrence with or objection to the consistency determination for the proposed federal activity.
- If the State objects to a federal agency's consistency determination, SPO's notification will: (a) indicate the specific enforceable policies with which the proposed activity is inconsistent; (b) describe how it is inconsistent; and (c) indicate what time extension was granted by the federal agency, if the objection is issued beyond the 60-day review period. The notification may also identify alternative measures, if
- Concurrent with Step 6

any, under which the activity could be found consistent. If the State's objection is based on a finding that the federal agency has failed to supply sufficient information, SPO will describe the nature of the requested information and why it is needed. *See 15 CFR §930.43(b).*

Within 90 days

8. SPO will notify the Director of OCRM in all cases where the State objects to a federal agency's consistency determination. *15 CFR §930.43(c).*
9. If the State and the federal agency cannot resolve any disagreements by the end of the 90 day period, the State or the federal agency can attempt to resolve disagreements through mediation by the Secretary of Commerce or OCRM. *15 CFR §930, Subpart G.*

Note: The above process applies to all federal agency actions (both listed and unlisted activities) for which a federal consistency determination and review are required.

C. Federal License or Permit Activities

A non-federal applicant for a federal license or permit (e.g., private citizens, industry, state and local governments) shall provide in the application to the authorizing federal agency a consistency certification in the following form:

"The proposed activity complies with the enforceable policies in the approved Maine Coastal Zone Management Program and will be conducted in a manner consistent with those policies."

Most federal license or permit activities requiring a consistency certification (i.e., listed activities within the coastal zone area) are subject to state and local permit requirements under the same state environmental laws that provide the enforceable policies used for federal consistency reviews and the permit applications provide the information needed to initiate review. *Consequently, in most instances, receipt of all the necessary state and municipal permits constitutes the State's concurrence with the applicant's consistency certification, and no further federal consistency review is required.* Pertinent state and local permitting processes provide opportunities for public notice and comment on the project's consistency with applicable enforceable policies. Applicants for federal permits may wish to contact SPO regarding applicable federal consistency procedures. If no enforceable policy is applicable, then consistency with the Maine Coastal Program is presumed. Procedures for listed and unlisted activities are outlined below.

1. Listed Activities

STEP	TIME
<p>1. For listed activities within the State’s coastal zone, the federal applicant includes in its application(s) a certification that the proposed activity complies with and will be conducted consistently with the enforceable policies of the Maine Coastal Program. This certification, and the federal application and related information specified in <i>15 CFR §930.58</i>, and pertinent completed state and local permit applications filed with DEP and other appropriate state agencies and municipalities constitute the necessary data and for consistency review.⁷</p> <p>Geographic Location Description. For listed activities that are outside the State’s coastal zone, the applicant must provide a consistency certification if the activity falls within the area of the Gulf of Maine, including Georges Bank, or on excluded federal lands within the coastal zone and submit the data and information necessary to demonstrate consistency, including pertinent state or local permit applications required for the proposed activity.⁸ <i>15 CFR §930.58; 15 CFR §930.53</i>.</p> <p>Applicants are strongly encouraged to provide the necessary data and information in the form of state permit application(s) as a means to expedite review and approval. In reviewing the certification and supporting data and information, the lead state agency (typically DEP) will make consistency findings based on the enforceable policies using the same procedures and standards used in evaluating permit and license applications under these laws and regulations.</p>	<p>At or near the time federal permit application(s) are filed</p> <p>Within 30 days</p>

⁷ Maine Coastal Program document, *supra*, p. 298

⁸ Id.

The lead review agency will review the applicant's submission for completeness and notify the applicant and federal agency in writing, within 30 days, if all necessary data and information has not been provided. The six-month review period begins when all necessary data and information has been received. The lead review agency may request additional information during the review period.

2. If the applicant receives the applicable state licenses and permits within six months of SPO's receipt of the applicant's consistency certification, the state licensed and permitted activity is deemed consistent with the enforceable policies of the Maine Coastal Program. On request and as it deems appropriate, SPO will respond directly to the permit applicant and/or federal agency that the State, in accordance with pertinent state licenses and permits, concurs that the proposed activity is consistent with the Maine Coastal Program. If the State does not object to the certification within six (6) months from the State's receipt of a complete consistency review request, the project is deemed consistent. Consequently, in some instances, the State may condition its concurrence on receipt of all applicable permits.

Within six (6) months of receipt of a complete review application
3. The State and applicant for a federal license or permit may agree in writing to stay the 6-month review period for a specified period of time. Such a stay may be appropriate to accommodate review of complex permits using state administrative processes.
4. If the State objects to an applicant's consistency determination, the applicant must receive SPO's objection letter within six (6) months from the State's receipt of a complete consistency review request or, alternatively, within the period agreed to by stay, as described in paragraph 3. SPO's objection letter must notify the federal agency and OCRM of the State's decision. The objection letter must describe how the.

Within six (6) months of receipt of a complete application

activity is inconsistent with specific enforceable policies in the Maine Coastal Program and may describe alternative measures (if they exist) that, if adopted, would permit the project to be conducted in a manner that is consistent with the enforceable policies. The letter shall also notify the applicant of its right to appeal the State's objection to the Secretary of Commerce who may override the State's objection if the Secretary finds that the project is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. If the State objects to the consistency certification, the federal agency shall not issue the license or permit absent override of the State's objection by the Secretary of Commerce pursuant to *15 CFR Part 930, Subpart H*. (See Appeal of a State Objection below.) *15 CFR Part 930.64*.

2. Unlisted Activities

STEP	TIME
1. If the State wishes to review an unlisted federal license or permit activity, or a listed license or permit activity outside the coastal zone for which OCRM's approval is required by <i>15 CFR §930.53(a)(2)</i> , SPO will notify the federal agency and the applicant that SPO intends to request approval from OCRM to review the unlisted activity. <i>See 15 CFR §930.54</i> .	Within 30 days of SPO receiving notice of the application filed with the federal agency
2. SPO notifies OCRM that the State seeks to review the unlisted activity and provides support for the State's assertion that coastal effects are reasonably foreseeable.	Concurrent with Step 1
3. The federal agency and the applicant may submit comments to OCRM regarding whether the State should be allowed to review the activity.	Within 15 days of SPO's notice to OCRM
4. OCRM will issue a decision to SPO, the federal agency and the applicant. OCRM must base its decision	Within 30 days of SPO's notice to OCRM

solely on whether the proposed activity's coastal effects are reasonably foreseeable. *15 CFR Part 930.54(C)*.

If OCRM denies the request, the federal agency may issue the license or permit without consistency certification.

If OCRM approves the request for review, the applicant must follow the same procedure for reviewing listed licenses or permits, above.

D. Outer Continental Shelf Plans

The procedure for obtaining a consistency certification for outer continental shelf activities is similar to the procedure for federal license or permit activities, outlined above. (See *15 CFR Part 930, subpart E* for details.)

E. Federal Assistance Activities (assistance to state agencies and local government)

SPO and other coastal program agencies monitor federal assistance activities in the coastal zone and areas potentially affecting the State's coastal zone through the intergovernmental review process established under state law and Federal Executive Order 12372. Applicants provide notice of their intent to apply for federal funds through the intergovernmental review process.

The State typically ensures that these activities are consistent with its enforceable policies through issuance of applicable licenses and permits, if and when the projects are later funded and undertaken. If earlier consistency review is needed, SPO will inform the federal agency and the applicant of the State's desire to conduct a consistency review within 30 days of receipt of notice through the intergovernmental review process. In this case, consistency review of an application for federal assistance will be performed by the lead review agency (typically DEP) using the same procedures and standards used to evaluate permit and license applications to the extent practicable.

The applicant may appeal the State's consistency objection to the Secretary of Commerce pursuant to 15 CFR Part 930, Subpart H. If the State objects to the consistency certification, the federal agency shall not provide funding for the activity

until the State's objections have been satisfied or overridden on appeal to the Secretary of Commerce. *Id.*

F. Mediation

In the event of a disagreement between a federal agency and the State over consistency with the Maine Coastal Program, either party may seek mediation by OCRM or the Secretary of the U.S. Department of Commerce. *15 CFR Part 930, Subpart G.*

G. Appeal of a State Objection

As noted above, non-federal applicants for federal licenses, permits or funding may appeal a State objection to the Secretary of the U.S. Department of Commerce. *15 CFR Part 930, Subpart H.*

APPENDIX A⁹

CORE LAW AUTHORITIES OF THE MAINE COASTAL PROGRAM¹⁰

The following state statutes and rules, commonly referred to as core laws, provide the “enforceable policies” of the Maine Coastal Program. Several core laws – e.g., the Maine Rivers Act, Marine Resources Laws, Coastal Management Policies Act, and Coastal Barrier Resources System Act – address governance issues and articulate state policy which is implemented through enforceable policies under other core laws.

❖ **Natural Resources Protection Act** (38 MRSA §§480-A to 480-S; 480-U to 480-HH)

- Wetlands Protection rules (DEP rules ch. 310)
- Coastal Sand Dune rules (DEP rules ch. 355)
- Permit by Rule standards (DEP rules ch. 305)
- Significant habitat rules (DEP rules ch. 335; DIFW rules ch. 10)
- Scenic Impact rules (DEP rules ch. 315)

❖ **Mandatory Shoreland Zoning Law** (38 MRSA §§435 to 449)

- Guidelines for Municipal Shoreland Zoning Ordinances (DEP rules ch. 1000)

❖ **Site Location of Development Law** (38 MRSA §§481 to 485-A; 486-A, -B; 487-A to 490; 490-A to 490-Z; 23 MRSA §704-A [MDOT traffic movement permit])

- Definitions of terms used in the site location of development law and regulations (DEP rules ch. 371)
- Policies and procedures (DEP rules ch. 372)
- Financial capacity standard (DEP rules ch. 373)
- Rules regarding the traffic standard (DEP rules ch. 374)
- No adverse environmental impact standard (DEP rules ch. 375)
- Soil types standard (DEP rules ch. 376)
- Review of roads (DEP rules ch. 377)
- Variance criteria; performance standards (storage of petroleum products) (DEP rules ch. 378)
- Planning permit (DEP rules ch. 380)

⁹ Updated March 2012.

¹⁰ The statutory provisions listed are those with force and effect as state law, as amended, on September 28, 2011, unless otherwise indicated. Rule provisions are those with force and effect as state law, as amended, May 1, 2011, unless otherwise indicated.

- ❖ **Erosion Control and Sedimentation Law** (38 MRSA §420-C)

- ❖ **Wind Energy Act** (35-A MRSA ch. 34-A)
 - Department of Conservation rules ch. 3
 - Related provisions (38 MRSA §§341-D; 344; 344-A; and 346, as applicable)

- ❖ **Storm Water Management Law** (38 MRSA §420-D)
 - Storm Water Management rules (DEP rules ch. 500)
 - Direct Watersheds of Water bodies Most at Risk from New Development, and Sensitive or Threatened Regions or Watersheds (DEP rules ch. 502)

- ❖ **Subdivision Law** (30-A MRSA §4401 to 4408)

- ❖ **Maine Rivers Act** (12 MRSA §§403 and 407)

- ❖ **Maine Waterway Development and Conservation Act** (38 MRSA §§630 to 636; 640)

- ❖ **Coastal Management Policies Act** (38 MRSA §1801)

- ❖ **Protection and Improvement of Air Law** (38 MRSA §§349; 581 to 610-A, -B)¹¹
 - DEP rules chapter. 100 (regulatory definitions), 113 (growth offset regulations), 115, 117 (source surveillance), 118 (gasoline vapor recovery), 134 (RACT for VOCs emitting facilities), 138 (RACT for nitrous oxides emitting facilities)

- ❖ **Protection and Improvement of Waters Act**¹² (38 MRSA §§347; 361 to 367; 371-A to 372; 410-N; 411 to 424; 451 to 455; 464 to 470)

- ❖ **Nutrient Management Act** (7 MRSA Part 10)

¹¹ State air and water pollution control laws, established pursuant to the federal Clean Air and Clean Water Acts, are incorporated into the Maine Coastal Program pursuant to the CZMA, 16 U.S.C. §1456(f).

¹² See footnote 11.

- ❖ **Land Use Regulation Law** (12 MRSA §§681 to 689)
 - List of Coastal Islands in the Jurisdiction of the Maine Land Use Regulation Commission
 - LURC Rules and Regulations, ch. 10 - Land Use Districts and Standards

- ❖ **Maine Hazardous Waste, Septage and Solid Waste and Management Act** (38 MRSA §§1273; 1281; 1296; 1298(3); 1301 to 1310-BB; 1316 to 1316-L; 1317 to 1319-W; 1362; 1367; 1393; 1395; 1608; 1609-10; 1661-1661-C; 1665-A, -B; 1672; 1851-2; 2133, sub-§2(A); PL 1999 c.348; 2157; 2165; 2302-2313)

- ❖ **Wellhead Protection** (38 MRSA ch. 13-D)

- ❖ **Nuclear Facility Decommissioning Laws** (PL 1999 c. 739 and PL 1999 c. 741)

- ❖ **Oil Discharge Prevention & Pollution Control Law** (38 MRSA §§344 to 349; 541 to 560; 561; 562-A; 563, sub-§1(A) and 2; 563-A-C; 564; 565-A; 566-A; 568; 568-A-B; 569-A, -C; 570; 570-A-G, I-L; 582; 584-A; 585-B; 585-D; 585-H; 585-K; and 603-A(2))

- ❖ **Marine Resources Law** (12 MRSA §§6171 to 6192; 6432-A)

- ❖ **Coastal Barrier Resources System Act** (38 MRSA §§1901 to 1905)

- ❖ **Maine Endangered Species Act** (12 MRSA §§12801-12810 [inland species]; 12 MRSA §6971-6977 [marine species]; 12 MRSA §10001, sub-§§19 and 62 [definitions])
 - Endangered species (DIFW rules ch. 8)

- ❖ **Fee Schedule** (38 MRSA §§352-353; and 353-A, -B)¹³

¹³ NOAA has clarified that federal agencies are not obligated to pay fees absent a requirement to do so under a federal law other than the Coastal Zone Management Act.

APPENDIX B
MAINE COASTAL TOWNS